



United States Department of the Interior

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AESO/SE
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November 16, 2016

Memorandum

To: Deputy Regional Director, Fish and Wildlife Service, Albuquerque, New Mexico
(ARD-ES) (Attn: Marty Tuegel, Delfina Montano)

From: Field Supervisor

Subject: Findings and Recommendation on Issuance of an Enhancement of Survival Permit for the Threatened yellow-billed cuckoo (*Coccyzus americanus*) in Maricopa County, Arizona (TE-205294-1)

I. DESCRIPTION OF PROPOSAL

The City of Phoenix developed a Safe Harbor Agreement (Agreement) in 2011, and has since prepared this Amendment and applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 USC §1531-1544)(Act). The requested permit, which is for a period of 50 years, would authorize incidental take of yellow-billed cuckoo (*Coccyzus americanus*) resulting from continued implementation of the Rio Salado Environmental Restoration Project. The area covered by the Amendment and associated permit is the same agreed upon in the Agreement and is approximately 595 acres within the Salt River. The City will hold the Amendment's associated Section 10(a)(1)(A) permit.

The Amendment continues to identify 595 acres of covered lands for restoration of native riparian and wetland ecosystems that will benefit the yellow-billed cuckoo within the Salt River. The City of Phoenix will notify the Service 60 days before any activity is undertaken that could result in incidental take of the species or loss of habitat, and allow the Service access to relocate individuals if deemed appropriate.

II. PUBLIC COMMENT

The Notice of availability, receipt of application, request for comments for the Draft Safe Harbor Agreement Amendment, and Application for an Enhancement of Survival Permit for the Phoenix Reach of the Rio Salado Environmental Restoration Project was published in the Federal Register on August 29, 2016. Publication of the notice initiated a 30-day comment period, which closed on September 29, 2016. The Amendment was available on the Service - Arizona

Ecological Services Office website and by request at the Phoenix Office. We received no responses.

III. ENHANCEMENT OF SURVIVAL PERMIT CRITERIA - ANALYSIS AND FINDINGS

1. The taking of the above listed species will be incidental to an otherwise lawful activity and will be in accordance with the terms of the Agreement.

Incidental take of yellow-billed cuckoo may occur under the Amendment primarily as a result of monitoring and adaptive management that will be part of the ongoing activities to be implemented by the Applicant. Any take of yellow-billed cuckoo will be incidental to these otherwise legal activities.

2. Implementation of the terms of the Amendment is reasonably expected to provide a net conservation benefit to the affected listed species. The Amendment otherwise complies with the Safe Harbor policy (May 3, 2004).

The Amendment is reasonably expected to provide a net conservation benefit to the above listed species, as required by the Services' Final Safe Harbor Policy as revised, 69 FR 24084 (May 3, 2004). The Amendment's purpose is to restore riparian and wetland ecosystems within the historical range of these species. Because the species is known to occur both upstream and downstream of the project, we believe there is a high likelihood that cuckoo will utilize these habitats.

3. The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any listed species.

The Act's legislative history establishes the intent of Congress that issuance criteria be based on a finding of "not likely to jeopardize" under section 7(a)(2) [see 50 CFR 402.02]. As a result, we have also reviewed the Applicant's permit application under section 7 of the Act. In the Biological Opinion, which is attached hereto and incorporated by reference, we concluded that issuance of the permit to the Applicant will not likely jeopardize the continued existence of the yellow-billed cuckoo. No other listed species will be affected by the issuance of this permit, directly or indirectly.

4. Implementation of the terms of the Amendment is consistent with applicable Federal, State, local, and Tribal laws and regulations.

The Amendment complies with all other applicable Federal, State, local, and Tribal laws and regulations as outlined in the Safe Harbor Agreement and Categorical Exclusion.

5. Implementation of the terms of the Amendment will not be in conflict with any ongoing conservation or recovery programs for listed species covered by the permit.

The yellow-billed cuckoo does not have a recovery plan. Implementation of the Amendment is consistent with recovery plans for other species in the action area. The Amendment will also

demonstrate incentives for private landowners to establish populations of listed species on non-Federal property, which could stimulate more interest in developing habitat for these species on non-Federal lands.

6. The Applicant has shown capability for, and commitment to, implementing all of the terms of the Amendment.

The Amendment is intended to cover continued operation and maintenance activities for the Phoenix portion of the Rio Salado Environmental Restoration Project which is a collaborative process between the U.S. Army Corps of Engineers and the City of Phoenix. The Army Corps of Engineers has already dedicated the funds to construct the project and the City of Phoenix has dedicated staff and resources to implement the terms of the original Safe Harbor Agreement, which were carried into this Amendment. The terms of the Amendment apply only to operation and maintenance of the project by the City.

IV. GENERAL CRITERIA AND DISQUALIFYING FACTORS – ANALYSIS AND FINDINGS

We have no evidence that the permit should be denied on the basis of the criteria and conditions set forth in 50 CFR 13.21 (b)-(c). The Applicant has met the criteria for the issuance of the permit and does not have any disqualifying factor that would prevent the permit from being issued under current regulations.

V. RECOMMENDATION ON PERMIT ISSUANCE

Based on the foregoing findings with respect to the proposed action, we recommend issuance of a permit to authorize incidental take of yellow-billed cuckoo in accordance with the Amendment.

acting for Carrie Mann
Field Supervisor

11/16/16
Date

Edward D. Leach
Assistant Regional Director

1/27/17
Date